United States Court of Appeals

for the Second Circuit

APPENDIX

75-2018

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

U.S.A. ex rel. DONALD WILLIAMS, PETITIONER, -v- JEROME PATTERSON, EASTERN CORRECTIONAL FACILITY, RESPONDENT.	UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK CASE NO. 73 Civ. 2977 JUDGE TENNEY

APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S.A. ex rel. DONALD WILLIAMS,
PETITIONER,
-v-
JEROME PATTERSON, EASTERN CORRECTIONAL FACILITY,
RESPONDENT.

CASE NO. 73 civ. 2977
JUDGE TENNEY
CLERK'S CERTIFICATE.

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- B, and the original filed papers numbered 1 thru 13, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED	PROCEEDINGS
XXXXX	
NONE.	

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 4th day of FEBRUARY, in the year of our Lord, One thousand nine hundred and seventy FIVE, and of the Independence of the United States the 199th year.

not d 4/1-75

Raymond F. Burghardt
Clerk of the Court.

73 CIV. 2977

DATE	PROCEEDINGS	Dc Jud.
Jul 6-73	Filed petition for Writ of Habeas Corpus.	
Jul 6-73	Filed rder permitting the pltff to proceed in forma pauperis without prepayment of fees. Stewart, J.	
Jul 31-73	Filed affidavit of Gene B. Mechanic in opposition to petitioner's application for a writ of habeas corpus.	
Aug 13-73	Filed memorandum in rebuttal of petitioner to affidavit of respondent	
Sep 7-73	Filed notice of assignment of the action to Tenney, J.	
Apr.24-74	Filed Notice of Appearance by Atty for Petitioner.	
Jun 3-74	Filed Memorandum of Law in opposition to petitioner's application for Writ of H/C.	
Dec.10-74	Filed Petitioner's affdvt.	
Dec.10-74	Filed " Suppl.Affdvt.	
Dec.10-74	Filed " Memorandum of Law in support of petitioner's application for a Writ of Habeas Corpus.	
Dec.10-74	Filed OPINION#41554.Petition for writ of Habeas Corpus denied.Tenney,J.	
/17/75	Filed Pltff's Notice of Appeal from decision and order of USDC,SDNY denying and dismissing petition for writ of habeas corpus on 12/10/74.(mn by Pro Se Clk)	
/17/75	Filed Affdvt of petitioner with memo end.on affdvt.Certificate of probable cause (28 USC,Sec.2253)and in forma pauperis on appeal(28 USC Sec.1915(d)granted. Tenney,	

A TRUE COPY
RAYMOND F. BURCHARDT, Clerk

By _____
Deputy Clerk

...S DISTRICT COURT

Jury demand date

73 CV. 2977

Form No. 106 Rev.

TITLE OF CASE

FILED.

1/17/75

U.S.A. EX REL, DONALD WILLIAMS

VS.

JEROME W. PATTERSON, WARDEN EASTERN CORRECTIONAL FACILITY, NAPANOCH, N.Y.

ATTORNEYS

For plaintiff:

~~DONALD WILLIAMS~~

Box R

~~Napanoch, N.Y. 12458~~

James F.Gill 4/24/74
230 Park Ave.NYC10017 689-7766

ONLY COPY AVAILABLE

For defendant:

Louis J. Lefkowitz
Attorney General
State of New York
Attn: Gene B. Mechanic
Two World Trade Center
New York, N.Y. 10047

UNITED STATES COURT OF APPEALS
FILED
FEB 4 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 6 mailed X	Clerk					
J.S. 6 mailed	Marshal					
Basis of Action: HABEAS CORPUS.	Docket fee					
	Witness fees					
Action arose at:	Depositions					

FEB 5 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S.A. ex rel. DONALD WILLIAMS,

Petitioner,

-against- 73 CIV. 2977 (CHT)

JEROME W. PATTERSON, Warden,
Eastern Correctional Facility,
Napanoch, New York,

Respondent.

MEMORANDUM

#41554

TENNEY, J.

Petitioner, a state prisoner, seeks a writ of habeas corpus from this Court under the provisions of 28 U.S.C. § 2254.

On April 6, 1972 petitioner was convicted of third degree burglary in the Supreme Court of the State of New York and sentenced to a term of imprisonment for not less than two years and four months and not more than seven years. After thirty-six months of confinement, petitioner was paroled; thereafter, he was arrested and charged with a violation of parole, and is currently detained at the New York City House of Correction for Men, East Elmhurst, New York. He seeks a writ on the grounds that his original conviction was unconstitutional. For the reasons set forth below, the petition is denied.

Petitioner presents four claims in support of his application. Although the precise grounds of his constitutional claims are not always clear, he claims in essence that:

DEC 11 1974

(1) he was denied his right to counsel at trial under the sixth and fourteenth amendments to the United States Constitution because the trial judge did not honor his request to have new counsel assigned, did not inquire into the reasons for that request, and did not inform petitioner of the disadvantages of self-representation;

(2) he was denied due process of law as guaranteed him under the fourteenth amendment because he was indicted by a grand jury upon insufficient evidence;

(3) he was also denied due process because there was no evidence adduced at trial concerning one of the elements which, according to New York law, must be pleaded and proved by the prosecution to obtain a conviction for the crime of burglary in the third degree; and

(4) he was denied a fundamentally fair trial and hence due process under the fourteenth amendment because the trial judge was biased against him and exhibited his bias at trial by ruling unfavorably to petitioner on all objections.

This Court may not consider the second and third claims advanced here by petitioner. His available state remedies as to them have not been exhausted, as required by 28 U.S.C. § 2254, since they were not raised by him as constitutional claims in the state courts. Picard v. Connor, 404 U.S. 270 (1971).

With regard to the other two claims, however, petitioner

properly raised the constitutional issues involved in his appeal to the Appellate Division of the Supreme Court, First Department, where his conviction was affirmed without opinion.[1] Thereafter, petitioner was denied leave to appeal to the Court of Appeals. Thus, it appears that he has exhausted his state remedies as required with regard to these claims. It is the substance of the first and fourth claims, therefore, which the Court will proceed to consider.

Petitioner's first claim requires an extensive analysis of the facts, allegations, and legal theory underlying it. The Court assumes, for the purposes of this application, the veracity of all of petitioner's allegations except where the record allows the Court to make its own determination of fact with respect to an allegation.[2] Nonetheless, it concludes that there was no violation of petitioner's constitutional right to counsel, but that the right was knowingly and validly waived by petitioner at trial when he elected to defend himself rather than to be represented by his appointed counsel.

Petitioner was arrested on September 26, 1971, and indicted on counts of burglary in the third degree, petit larceny, and possession of burglar's tools. As he was an indigent, Legal Aid was assigned to represent him. On November 17, Legal Aid was relieved from the case, Alan S. Stim being appointed in its place to represent petitioner. (The change was made at petitioner's request, presumably because of a conflict which developed

over his refusal to accept the offer of a plea obtained from the prosecution by Legal Aid.)

It is alleged that Stim urged petitioner to accept the offer of plea obtained by Legal Aid, and that when he refused, Stim ceased to take an active role in defending his client. This disinterest on the part of Stim is claimed to be the basis of a "serious and irreconcilable conflict" that arose at that time between petitioner and Stim.

A pre-trial hearing (Huntley Hearing) was held during the period January 20 to January 26, 1972, at which Stim represented petitioner. Petitioner claims that the hearing was held only because he personally applied for it. The State, however, asserts that Stim ably represented petitioner at the hearing, and this is borne out by the transcript of the proceedings. Any disinterest on the part of Stim is not apparent from the record. (It is obvious, however, that petitioner was at this point already taking an active role in his own defense; at one point Stim made a motion using arguments based on a memorandum of law written and researched by petitioner.)

Petitioner claims he made four applications to the court for Stim's removal before trial began, the first being made on February 2. February 2 was the date which had been set at the end of the Huntley Hearing for trial; however, the trial did not begin until April 3 and the record available to us is silent as to what took place between January 26 and that date.

When the case came on for trial on April 3, petitioner made it known to the trial judge that he was dissatisfied with Stim and requested that he be removed from the case and that other counsel be assigned. He did not make known his reasons for dissatisfaction, however, and the judge did not inquire specifically as to what they were. Given the choice between proceeding in his own behalf with Stim available for consultation and proceeding with Stim as his advocate, petitioner chose to represent himself. The trial proceeded on this basis.

Stim submitted jury charges and prepared a subpoena duces tecum to secure the production of prison records which petitioner was seeking. He conferred with petitioner both after the trial judge advised the latter of his right to choose whether to take the stand and after the trial judge made and denied a motion in petitioner's behalf to dismiss the case. Petitioner admitted at trial having consulted with Stim before the trial, but he denies that he had any conversations with Stim relating to the preparation of his case. Stim also reserved all motions with respect to the verdict until the day of sentencing.

Petitioner recognized Stim as his counsel at the sentencing hearing. Stim made and argued pre-sentence motions at some length, though petitioner spoke in his own behal at this point as well.

These, then, are the facts and allegations pertinent to a consideration of petitioner's claim that he was denied the

right to counsel. It remains to consider the law as it relates to this claim.

It has been consistently held that, when a defendant has a constitutional right to court-appointed counsel, he may be effectively denied that right if the court fails to inquire into a situation where defendant makes complaints which suggest he has developed such an irreconcilable conflict with appointed counsel that counsel can no longer effectively represent him.

In United States v. Morrissey, 461 F.2d 666 (2d Cir. 1972), the court asserted that

> "[t]he courts cannot give with one hand an indigent defendant the right to appointed counsel and then, with the other hand, effectively take that right away by refusing to recognize the possibility that defendant's allegations of inadequate representation might prove correct after detailed inquiry." United States v. Morrissey, 461 F.2d at 670, n.6.

Similarly, in Brown v. Craven, 424 F.2d 1166 (9th Cir. 1970), it was stated:

> "We think, however, that to compel one charged with grievous crime to undergo a trial with the assistance of an attorney with whom he has become embroiled in irreconcilable conflict is to deprive him of the effective assistance of any counsel whatsoever.... The problem arises because the state court did not, in our opinion, take the necessary time and conduct such necessary inquiry as might have eased Brown's dissatisfaction, distrust, and concern." Brown v. Craven, 424 F.2d at 1170.

However, there are limits to when a court will constitutionally be required to inquire into complaints by defendants, as the Second Circuit made clear in United States v. Calabro,

467 F.2d 973 (2d Cir. 1972), cert. denied, 410 U.S. 926 (1973). There, the court stated that to be constitutionally entitled to a substitution of counsel at trial, "the defendant must show good cause, such as a conflict of interest, a complete breakdown in communication or an irreconcilable conflict which leads to an apparently unjust verdict." The trial judge is obligated to inquire into "seemingly substantial complaints[s] ..., when he has no reason to suspect the bona fides of the defendant...." United States v. Calabro, 467 F.2d at 986.

The court in Calabro emphasized that good cause and bona fides must be shown because a defendant has no absolute right to change counsel on the eve of or during trial. The request cannot be used to delay the proceedings, and the judge may consider the request in light of the delay it will cause. See United States ex rel. Jackson v. Follette, 425 F.2d 257 (2d Cir. 1970). Thus, the court in Calabro declared:

> "While courts must be assiduous in their defense of an accused's right to counsel, that right may not be 'manipulated so as to obstruct the orderly procedure in the courts or to interfere with the fair administration of justice'. United States v. Bentvena, 319 F.2d 916, 936 (2d Cir.), cert. denied sub nom. Ormento v. United States, 375 U.S. 940, 84 S.Ct. 345, 11 L.Ed.2d 271 (1963) [other citations omitted]." United States v. Calabro, 467 F.2d at 986.

Because of the large gap in the record between January 26 and April 3, it is unclear whether petitioner made his first complaint on the eve of trial, whether he ever stated his reasons, or whether the presiding judge ever inquired at all into the

complaint. In view of the law as pronounced in the cases above, however, petitioner would be in the strongest position to claim a denial of his right to counsel if he could establish that he first complained in a situation where the motive of delay could not be attributed to him;[3/] that he presented in full his reasons at that time and later to the presiding judge; and that at no time did any of the judges to whom he presented his complaint inquire into whether it was justified. For purposes of this decision the Court will assume that this is indeed what happened.

It is submitted that, even in this situation, on the basis of the Second Circuit's decision in United States v. Morrissey, supra, 461 F.2d 666, petitioner's application for a writ must be denied.

Though Morrissey involved a federal conviction and appeal, the issue involved was the same. In Morrissey, as here, the defendant complained of a denial of his right to counsel under the sixth amendment because of a failure on the part of the trial judge to inquire concerning his alleged reasons for dissatisfaction with his court-appointed counsel. Morrissey was accused of robbery and his trial was scheduled to begin on April 26, 1971. However, on that date, the trial was adjourned until May 10. It did not finally begin until September 3. On April 26, Morrissey wrote the trial judge to ask for new counsel because he said he and counsel were unable to understand each other and counsel either was not able or was unwilling to represent him effectively.

It is not clear that the judge ever received the letter, because when Morrissey made the request again on September 3 (at which time his counsel acquiesced) and on September 7, being specific as to his reasons, the judge made only a "perfunctory, surface inquiry" to determine what substance there was to the allegations. Apparently believing that the motive was delay, the judge gave Morrissey the choice of proceeding pro se with his appointed counsel in the courtroom as an advisor or continuing with assigned counsel. Morrissey chose the former alternative.

Morrissey represented himself "in credible fashion" throughout the "major portion" of the trial, and the trial judge questioned witnesses and made motions on his behalf. Morrissey availed himself of his assigned counsel's services some twelve times during the pre-trial hearings and the trial. He expressed rejection of his counsel, however, throughout the proceedings. The jury returned a verdict of guilty and Morrissey was sentenced to ten years imprisonment.

The Second Circuit considered some of the reasons put forth by Morrissey (on September 3 and September 7 regarding his reasons for requesting new counsel) to be sufficient to warrant searching inquiry. Those reasons included counsel's failure to seek out an important alibi witness; his failure to meet with defendant for five months before trial to prepare a defense; and his failure to seek out witnesses for a post-trial hearing on the voluntariness of his confession.

The court found that the trial judge's lack of inquiry would, standing alone, normally require reversal. However, either because the allegations were incorrect or because they were cured by subsequent actions of defendant's counsel and the trial judge, the court found that the reasons for reversal became insubstantial. For example, Morrissey did not object when his counsel told the judge at trial that defendant did not wish to call any alibi witnesses. Also, a specified witness whom Morrissey wanted present was obtained during a pre-trial hearing on voluntariness. And since counsel went to see Morrissey (over the Labor Day weekend) prior to trial, they could have had enough time to plant a defense since the case was relatively simple. Furthermore, the court ruled that because Morrissey conferred with counsel several times during pre-trial and trial proceedings, the relationship, though perhaps strained, was not burdened by an "irreconcilable conflict".

Petitioner here is in virtually the same situation. Though presumably his reasons for dismissal (counsel's lack of interest, failure to make applications to the court for hearings, failure to make motions, and failure to help prepare a defense) were sufficiently serious on their face to require probing inquiry, the record as a whole indicates that the reasons were insubstantial, and that there never was an "irreconcilable conflict" as petitioner claims.

Though petitioner alleges having problems getting Stim

to do such things as filing for the Huntley Hearing or making pre-sentence motions, the record indicates that, in fact, these things were done. Actually, it indicates that Stim performed quite adequately as petitioner's advocate each time, taking an active part in the proceedings and exhibiting adequate knowledge of the case. At trial, Stim appeared willing to help at petitioner's request, and petitioner's claim that Stim was reluctant to obtain even a subpoena for him because of an "irreconcilable conflict" is without foundation. Rather, the reluctance on Stim's part appears from the record to have been due to the practical exigencies of the situation at the time.[4/]

Most importantly, it seems clear that if Morrissey had no "irreconcilable conflict" because of his use of counsel at pre-trial and trial proceedings, petitioner cannot here reasonably be considered to have had such a conflict. Not only did petitioner confer several times with Stim and allow Stim to make motions for him during the trial, but he recognized Stim as his counsel at both pre-trial and sentencing proceedings. As previously mentioned, Stim represented him actively on both of those occasions.

It might be argued that petitioner simply gave up in his attempt to represent himself by the time of the sentencing hearing. However, it seems exceedingly unlikely that one who displayed such tenacity in actively defending himself all through his own trial would suddenly give in so completely at the prospect

of one last proceeding. Furthermore, this would not explain the fact that there was no apparent conflict at the Huntley Hearing, during which time petitioner alleges the "irreconcilable conflict" existed.

It should be noted that this substantial communication with counsel clearly distinguishes this case from Brown v. Craven, supra, 424 F.2d 1166, where the defendant was held to have been deprived of his constitutional right to counsel. In that case, the defendant never cooperated or communicated with his appointed counsel in any way.

With regard to the argument that petitioner did not waive his right to counsel because the trial judge did not advise him of the disadvantages of proceeding pro se, the petitioner is on no better ground. It is true that, in general, a defendant should be so warned before he can be held to have knowingly waived his right to counsel. United States v. Plattner, 330 F.2d 271 (2d Cir. 1964). However, it is also true that there can be a valid waiver where the circumstances show that the defendant was aware of the advantages of being represented by counsel. United States v. Rosenthal, 470 F.2d 837, 845 (2d Cir. 1972), cert. denied, 412 U.S. 909 (1973); United States v. Duty, 447 F.2d 449, 451 (2d Cir. 1971). Petitioner here had an extensive criminal record and had served many prison sentences.[5] He was thus well acquainted with the criminal process, as his actions at trial clearly reflect. Moreover, petitioner himself very clearly expressed an

understanding of the disadvantaged position he would be in if he proceeded pro se when he stated, in a colloquy with the trial judge:

> "I'm not confident. I know little or no law at all. I'm a layman. I'm not familiar with the mechanics of legal procedure so that if I do be forced to represent myself, the trial would be merely a miscarriage of justice because I'm not familiar with the legal procedures." (Trial transcript at 5).

It is thus quite clear that petitioner was well aware of the disadvantages of proceeding without counsel without the warnings which, he complains, were not given by the trial judge, and as a result cannot claim that he did not waive his right to counsel because he was not given those warnings.

For all of the above reasons, petitioner's claim of denial of the right to counsel is without merit, and it only remains for the Court to consider the fourth and final claim presented.

The fourth claim, based on an alleged bias of the trial judge against petitioner, can be easily dismissed. It is claimed (in somewhat unclear fashion) that the judge exhibited bias by ruling unfavorably to petitioner on all objections made at trial. Petitioner assumes that because all of his own and the prosecution's objections were decided adversely to him, it automatically follows that the judge must have been making errors of law, and that, because the errors were made consistently in the prosecution's favor, it automatically follows that the judge was biased

against petitioner. In the light of the record, this reasoning cannot stand.

In the first place, the record indicates that the trial judge did not always rule favorably to the prosecution. Secondly, though he did rule more often in favor of the prosecution than in favor of petitioner, this does not justify petitioner's reasoning in the context of this particular trial proceeding, involving as it did petitioner's representation of himself without the benefit of representation by counsel. Petitioner as a layman could not possibly be expected to have a knowledge of the law or of trial practice sufficient to allow him to recognize properly objectionable conduct by the prosecution. Petitioner's lack of knowledge as to properly objectionable matters would obviously lead to his making fewer valid objections and more invalid ones than would be the case were he represented by counsel. Conversely, the prosecutor would presumably as a lawyer be able to make objections more likely to be sustained. In addition, petitioner's inexpert representation of himself would undoubtedly contain more properly objectionable mistakes in the first place than would the prosecutor's presentation of the case for the State.

Indeed, an inference of fair-mindedness rather than bias is justified by the record, since it is obvious that the judge not only exhibited a willingness to explain the complexities of legal procedure to petitioner, but also aided him by questioning witnesses and making motions on his behalf. Thus, this Court

concludes that petitioner's claims of bias on the part of the trial judge and denial of a fundamentally fair trial are entirely unjustified on the facts as presented by the record of the trial proceedings.

As the Court has now considered both claims of petitioner for which state remedies have been exhausted and found that neither is valid, it must conclude that a writ cannot issue. However, the Court wishes to take this opportunity to thank James F. Gill, Esq., assigned counsel, for his able representation of petitioner.

Accordingly, the petition for a writ of habeas corpus is denied.

So ordered.

Dated: New York, New York

December 10, 1974

Charles S. Haight
U.S.D.J.

U.S.A. ex rel. DONALD WILLIAMS,
Petitioner,

-against-

JEROME W. PATTERSON, Warden,
Eastern Correctional Facility,
Napanoch, New York,
Respondent.

73 Civ. 2977 (CHT)

FOOTNOTES

1/ 41 App. Div. 2d 1029 (1973).

2/ These determinations may be made without an evidentiary hearing. See Giacolone v. Lucas, 445 F.2d 1238, 1243-44 (6th Cir. 1971), cert. denied, 405 U.S. 922 (1972), and Sawyer v. Craven, 325 F. Supp. 526, 529 (C.D. Cal. 1971).

3/ This would be the case, for example, if the situation were such that on February 2, the day the trial was scheduled to begin, Stim requested and was granted the adjournment until April, and petitioner then complained to the judge, perhaps feeling that Stim had requested the delay only because he was not interested in the case.

4/ Stim asked if, as a matter of convenience, the District Attorney's office could supply the subpoena, and the trial judge seemed to approve of the idea. Trial transcript at 187.

5/ See Sentence transcript at 16-18.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Office of the Clerk
United States Court House,
Foley Square
New York, N.Y. 10007

DONALD WILLIAMS
14-14 Hazen Street
East Elmhurst N.Y. 11370

Date 12-13-74

Title: U.S.A. ex rel WILLIAMS -v- PATTERSON

Docket Number: PRO SE [illegible] 73 civ 2977

Decision dated: Dec 10, 1974

Judge TENNEY

Sir:

There is enclosed herewith, copy of decision filed and entered in the above-entitled proceeding.

Very truly yours,

RAYMOND F. BURGHARDT
Clerk

by: J. BLUM
Deputy Pro Se Clerk

c.c.
LOUIS J. LEFKOWITZ
ATTORNEY GENERAL
STATE OF NEW YORK

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S CERTIFICATION

I, an attorney admitted to practice in the State of New York, do hereby certify pursuant to Sec. 2105, CPLR, that I have compared the within with the original and have found it to be a true and complete copy thereof.

Dated: 19 Signature .....

Typed or Printed Name .....

STATE OF NEW YORK, COUNTY OF

AFFIRMATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the State of New York, affirms: That the undersigned is the attorney(s) of record for in the within action; that the undersigned has read the foregoing and knows the contents thereof; that the same are true to affirmant's own knowledge, except as to the matters therein stated to be alleged on information and belief; and as to those matters affirmant believes them to be true.

The undersigned further states that the reason this affirmation is made by the undersigned and not by

The grounds of affirmant's belief as to all matters not stated to be upon affirmant's knowledge, are as follows:

The undersigned affirms that the foregoing statements are true, under the penalty of perjury.

Dated: 19 Signature .....

Typed or Printed Name .....

STATE OF NEW YORK, COUNTY OF ss.:

INDIVIDUAL VERIFICATION

, being duly sworn, deposes and says that deponent is the in the within action; that deponent has read the foregoing and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

Sworn to before me, this day of 19 .....

STATE OF NEW YORK, COUNTY OF ss.:

CORPORATE VERIFICATION

, being duly sworn, deposes and says that deponent is the of the corporation named in the within action; that deponent has read the foregoing and knows the contents thereof; and that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes them to be true.

This verification is made by deponent because is a corporation. Deponent is an officer thereof, to-wit, its

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this day of 19 .....

STATE OF NEW YORK, COUNTY OF ss.:

AFFIDAVIT OF SERVICE BY MAIL

NOTICE OF ENTRY

Sir :

Please take notice that the within is a true copy of a

duly entered in the within named court on 19

Dated,

Yours, etc.,

ROBINSON, SILVERMAN, PEARCE, ARONSOHN, SAND & BERMAN

Attorneys for

Office and Post Office Address
230 Park Avenue
New York, N. Y. 10017

To

Attorney for

NOTICE OF SETTLEMENT

Sir :

Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named court, at

on the day of 19

at M.

Dated,

Yours, etc.,

ROBINSON, SILVERMAN, PEARCE, ARONSOHN, SAND & BERMAN

Attorneys for

Office and Post Office Address
230 Park Avenue
New York, N. Y. 10017

To

Attorney for

Index No. Year 19
Case No. 73 Civ. 2977

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

U.S.A. ex rel. DONALD WILLIAMS,

PETITIONER,

-v-

JEROME PATTERSON, EASTERN CORRECTIONAL FACILITY,

RESPONDENT.

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ROBINSON, SILVERMAN, PEARCE, ARONSOHN, SAND & BERMAN

Attorneys for Petitioner

Office and Post Office Address
230 Park Avenue
New York, N. Y. 10017
AREA CODE 212 MU 8-7766

To

Attorney for

Service of a copy of the within

is hereby admitted

Dated, 19

Attorney for

The undersigned affirms that the foregoing statements are true, under the penalty of perjury.

Dated: 19 *Signature*.....

Typed or Printed Name.....

STATE OF NEW YORK, COUNTY OF ss.: **INDIVIDUAL VERIFICATION**

, being duly sworn, deposes and says that deponent is the in the within action; that deponent has read the foregoing and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

Sworn to before me, this day of 19 .....

STATE OF NEW YORK, COUNTY OF ss.: **CORPORATE VERIFICATION**

, being duly sworn, deposes and says that deponent is the of the corporation named in the within action; that deponent has read the foregoing and knows the contents thereof; and that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes them to be true.
This verification is made by deponent because is a corporation. Deponent is an officer thereof, to-wit, its
The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this day of 19 .....

STATE OF NEW YORK, COUNTY OF ss.: **AFFIDAVIT OF SERVICE BY MAIL**

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the within

upon the attorney(s) for in this action, at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

Sworn to before me, this day of 19 .....

STATE OF NEW YORK, COUNTY OF ss.: **AFFIDAVIT OF PERSONAL SERVICE**

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 at No. deponent served the within

upon
by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me, this day of 19 .....